

1 encompass the parties in this proceeding and
2 the Enforcement Bureau, in that negotiation,
3 the Bureau took no position as to what
4 compensation the companies would offer Mr.
5 Waugh for past services rendered or anything
6 else that he sought compensation for, except
7 that stock not be issued to him in the form of
8 a voting trust as part and parcel of the
9 settlement, or henceforth, if we were to be
10 able to resolve this proceeding.

11 The reason for that is several
12 fold. One, the companies themselves did not
13 want to issue stock to Mr. Waugh after the
14 negotiations on their business issues had
15 concluded. And it's within the licensees
16 purview to decide what happens to their
17 licenses and the stock interest --

18 JUDGE SIPPEL: I'll talk to Mr.
19 Austin --

20 MS. SINGH: Of course. Of course.

21 JUDGE SIPPEL: But what about from
22 the Bureau's standpoint?

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1 MS. SINGH: From the Bureau's
2 standpoint, your Honor, the pattern of
3 misconduct that the order to show cause
4 alleges was predicated in large part upon the
5 appearance that stock had been issued to Mr.
6 Waugh for his benefit through this voting
7 trust, that it constituted -- constitutes --
8 a significant chunk of stock in the company,
9 that that interest was not disclosed to the
10 Bureau nor to the Commission, that the
11 beneficiary of that voting trust is a
12 convicted felon, and that that same convicted
13 felon appeared to be acting as a consultant
14 for the very companies in which he held stock,
15 and appeared to be running the day-to-day
16 affairs of a very small closely held starter
17 corporation.

18 So in our minds, if we were to
19 settle the case and conclude the settlement
20 with a fact pattern that goes against the
21 licensees' wishes, number one, but two, and
22 most importantly, leads us right back to the

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1 fact pattern that led to this hearing being
2 designated in the first place, at least in the
3 Bureau's understanding, it seems like that
4 would be a paramount concern to the Bureau and
5 that we would certainly not sign on to some
6 sort of resolution that permits that.

7 We would be right back in the
8 place where we started where we can't trust
9 that the voting trust, despite its terms, or
10 despite its forms, or despite the parties'
11 good faith, is in fact only a voting trust for
12 Mr. Waugh's benefit and that it won't be used
13 to conceal some sort of sham arrangement
14 between the parties as to his level of
15 involvement or control within the company.

16 JUDGE SIPPEL: Well, under that --
17 if I'm listening to that scenario, the voting
18 trust is set up, basically it's set up by the,
19 by the issuing company, right, or at least
20 under the direction of the issuing company, I
21 mean, the stock issuing company, correct, or
22 not correct?

1 MR. GUSKEY: This is Mr. Guskey.
2 The creation formation of the trust would be
3 the responsibility of Mr. Waugh.

4 JUDGE SIPPEL: So it doesn't exist
5 yet. The trust does not exist yet or it does
6 exist?

7 MR. GUSKEY: It does not, sir.

8 MS. SINGH: Actually, your Honor,
9 that's a matter of contention in the record
10 and the Bureau would just like to reserve the
11 right to comment on the substance if it
12 becomes necessary to do so.

13 JUDGE SIPPEL: Thank you.

14 MR. GUSKEY: But as far as
15 Preferred's position is, the trust has not
16 been, been formed and in Mr. Waugh's
17 deposition, it also -- he personally confirms
18 that the trust has not been formed. So in a
19 sense there is, he has a contention on the
20 matter -- that their view of things, but as
21 far as it being, again a matter between a
22 company and a consultant, neither of those

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1 parties have any disagreement as far as the
2 trust, in fact not being formed.

3 JUDGE SIPPEL: Well, do you think
4 it's doable? --

5 MR. GUSKEY: Your Honor,
6 unfortunately, we do not. And there's one
7 thing to clarify as far as Mr. Waugh's claim
8 to this stock, even though -- it dates back
9 over ten years. It's not something that has
10 accrued over ten years.

11 His claim is that based on, on
12 work performed many, many, many years ago, he
13 was entitled to what he was claiming. It can
14 speak for itself that over ten years has gone
15 passed without that matter being resolved.

16 As far as his current status,
17 again, according to Mr. Waugh's deposition, he
18 indicated, you know, in his deposition, under
19 oath in January of 2009, that when asked by
20 the Enforcement Bureau the status of his
21 relationship with the firm was and his
22 compensation, he indicated that it was -- and

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1 I'll quote, he says, that is high likely
2 probability litigation and regarding
3 litigation it was a virtual certainty. But
4 the point of that is, it has been a
5 longstanding matter of contention as to Mr.
6 Waugh's compensation.

7 JUDGE SIPPEL: Do you think it's
8 worth -- yes, but do you think it's worthwhile
9 sitting down and having serious negotiations
10 about it? Go ahead.

11 MR. GUSKEY: In answering that,
12 your Honor, again, this is Mr. Guskey, as --
13 when you started the clock in March of '09,
14 the point of which the EB and the various
15 parties entered or pursued what would be
16 referred to as serious negotiations, the
17 company knew at that point that a resolution
18 of the matter with Waugh despite it had been
19 pending for ten plus years would be
20 appropriate and necessary to resolve in order
21 to abide again transparency and clarity giving
22 the FCC regarding Preferred's relationship

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1 with Mr. Waugh.

2 At that point, we endeavored for
3 many, many months, you know, to, to have those
4 negotiations. There is a track record of
5 correspondence, and in that process, the
6 company, you know, prior to that had decided
7 that the parent company did not want Mr. Waugh
8 to own stock in the company directly or
9 through a trust or any way shape or form.

10 That was a decision made by the
11 company and then the company has a grievance
12 for doing that, but consequently -- Mr. Waugh
13 believes he has -- claims for specific
14 performance of stock. He could take that to
15 civil court. Putting that aside, we tried for
16 many, many months, and you can read --

17 JUDGE SIPPEL: Well, I'm not trying
18 to -- Mr. Guskey, I don't -- I don't -- think
19 of me in this term, I had just walked in the
20 door. I don't care what happened before. I
21 really don't, except that for background
22 purposes to understand what's going on here.

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1 But my, my question is, let's say
2 today is a new day, okay, a brand-new day,
3 does it make -- is it, is there any
4 possibility that you and Mr. Waugh can sit
5 down and work out some finality to this, this
6 issue about compensation?

7 MR. GUSKEY: I understand your
8 Honor's question and I wish I could say that,
9 that I would be personally hopeful that it
10 would occur. Again, I look, you know, we have
11 tried that for many, many months, and even
12 there were times where we thought we were
13 close to a resolution.

14 And one of the things that really,
15 I believe, you know, has bearing on, you know,
16 reaching the impasse, and now we're
17 approaching the FCC to agate the settlement
18 separate from Mr. Waugh regarding this action.
19 It goes back to, to a number of communications
20 in June of '09, at which point in a memorandum
21 -- from the company's perspective, we didn't
22 want him to be a stockholder.

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1 JUDGE SIPPEL: Okay.

2 MR. GUSKEY: However, but what we
3 did offer was that he would receive, you know,
4 some amount, but it would be at an equivalency
5 calculation so that he would not be a
6 stockholder, but in the end, its economic
7 benefit would be as if he were a stockholder.
8 And, again, there would be a distinction there
9 because, we again, you know, will not issue
10 Mr. Waugh stock directly through a trust.

11 We communicated that through Mr.
12 Silva to Mr. Waugh, and it was a -- again,
13 conversation, as well as letters, which are
14 available for your review. We got a response
15 from Mr. Silva back, and is a memorandum,
16 which he attached, again, the Waugh statement
17 of settlement that he filed last week that
18 indicated that Mr. Waugh appeared to be
19 amenable to compensation that would be
20 something other than the stock that he had
21 previously been demanding.

22 JUDGE SIPPEL: All right. You

1 finally said something that I, that makes
2 sense. All of this other -- it doesn't help
3 what I'm trying to accomplish today. I
4 understand. It sounds like there's been a lot
5 of frustrating, either the term, negotiations,
6 compensations, back-and-forth about this that
7 makes it, that has made it very frustrating
8 for both sides for whatever reason.

9 I don't care who's at fault here.
10 That's not the point. But it sounds to me now
11 -- but now you said something that rings a
12 little bit of interest here that there is an
13 amount of money that might, that this thing
14 might go away. I mean, in other words, give
15 up on the stock, take money, and go. I'm
16 asking Mr. Silva this question.

17 MR. GUSKEY: Let me finish my
18 comment and I'm certain Mr. Silva can step in
19 and provide, you know, his --

20 JUDGE SIPPEL: Well, his client --
21 what would -- would his client take money
22 instead of stock? Isn't that what you're

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1 basically saying?

2 MR. GUSKEY: Yes, again, as opposed
3 to this calling it money, the reason is as a
4 starter corporation and keeping within the
5 spirit of Mr. Waugh's original involvement
6 that he could be compensated and potentially
7 very handsomely based on the consent of the
8 company.

9 And so to resolve it or resolve it
10 in a monetary -- insured dollars, we did not
11 pursue that or break that idea because that
12 was like he, him individually, had other
13 individuals who invested in the company, you
14 know, only stock and so forth. So we came up
15 with what we thought was the best resolution,
16 i.e., one, where he didn't get stock because,
17 again, irrespective of the EB's position, the
18 company had made that decision that we did not
19 want him, and this is not, you know, and other
20 shareholders and other folks involved that,
21 that has made a clear voice.

22 And we, again, created a vehicle

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1 by which Mr. Waugh would receive future
2 compensation based on a calculation that would
3 be tied to a number of shares. The number of
4 shares is really a mechanism for the
5 calculation. We proposed that, again, to Mr.
6 Waugh through Mr. Silva, and again, Mr. Silva
7 sent a memorandum back indicating that they
8 were open to that type of concept and that
9 they were wanting to look at drafting, Mr.
10 Silva indicated that earlier that they were
11 going to be drafting an executory contract,
12 was the term they used, for our review.

13 We, you know, without digressing
14 we never received that, but we were, we were
15 open to that as far as a conceptual
16 resolution. And in saying that, he announced
17 that we had offered, which was much less than
18 the entirety of the claim that Mr. Waugh was
19 looking for. He was looking for a total of
20 approximately 2.2 million shares. We offered
21 the equivalency of 800,000 shares.

22 While that was pending in mid-to-

1 late June, and we were expecting to -- and a
2 part of our efforts, we drafted a letter of
3 intent with those specific terms with the
4 800,000 shares, et cetera equivalency for Mr.
5 Waugh and we were expecting to hear back from
6 Mr. Waugh via Mr. Silva.

7 Several weeks went by and we
8 hadn't heard anything and the next thing we
9 have was a conference call on July 8 in which
10 Mr. Waugh completely reversed any acceptance
11 or possibility of acceptance of a non-stock
12 resolution to the business dispute and
13 reiterated his, the entirety of his original
14 claim, as well as the add-on, as Ms. Singh
15 described again in the July 8 letter.

16 And at that point, we knew we were
17 at an impasse that despite several months of
18 effort and progress and clearly the documents
19 provided, you know, in the record a particular
20 memo from Mr. Silva. He indicated that we
21 were making progress so that one of the --

22 JUDGE SIPPEL: What's the date of

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1 that memo roughly?

2 MR. GUSKEY: The memo --
3 unfortunately, the memo is not dated itself,
4 although, it was, I believe June 5th or 6th in
5 that period.

6 JUDGE SIPPEL: Of this year?

7 MR. GUSKEY: Of this year. And it
8 is attached. It's an attachment to the
9 settlement fact statement submitted by Mr.
10 Waugh on August 28.

11 JUDGE SIPPEL: I understand. Okay.
12 Okay. Okay. Okay. The fact statement of Mr.
13 -- now, go ahead. Ms. Singh is very
14 interested in interjecting something here and
15 I'm going to let her do it. Go ahead.

16 MS. SINGH: Thank you, your Honor.
17 Just two things. One, the Enforcement
18 Bureau's position is entirely consistent with
19 what Mr. Guskey just laid out on behalf of
20 Preferred, and we had no objection to the
21 forms of compensation that Preferred offered
22 Mr. Waugh during settlement negotiations

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1 during this formal stretch of time that were
2 talking about, March 2009 to August 2009.

3 JUDGE SIPPEL: Okay. Thank you.
4 - That's important. Thank you.

5 We're back to you now, Mr. Silva.

6 MR. SILVA: My turn?

7 JUDGE SIPPEL: Your turn, sir.

8 MR. SILVA: Okay.

9 JUDGE SIPPEL: But it sounds to me
10 like they want to give you money and it's just
11 a question of how much.

12 MR. SILVA: Well, the problem with
13 that, your Honor, is the company doesn't have
14 any money, but let me --

15 JUDGE SIPPEL: They're going to
16 give you a future's contract.

17 MR. SILVA: I want to make two
18 points. One, first of all, whether or not Mr.
19 Waugh is entitled to this beneficial interest.
20 Mr. Austin stated under oath at his deposition
21 that he was entitled to it. That this
22 agreement has been in existence for a long

1 time.

2 Mr. Bishop and Mr. Waugh both
3 signed a settlement agreement, which we
4 presented to the Bureau back in July of 2008,
5 where they agreed that the company would issue
6 stock to the voting trust, so, you know, I
7 think that is important to take into account.

8 JUDGE SIPPEL: Is that settlement
9 agreement, is that one of the exhibits to
10 something there that I got?

11 MR. SILVA: I can provide it to
12 you, but it's, it's been referred to.

13 MS. SINGH: I believe so, your
14 Honor, that it might have been an exhibit to
15 the settlement fact statement that was filed
16 by Preferred Communication Systems, Inc. It's
17 possible that they had submitted that as an
18 attachment to their proposal, but that was
19 actually, or to their settlement fact
20 statement, but that proposal to which Mr.
21 Waugh's counsel refers, is something that our
22 understanding, the Bureau's understanding, and

1 I invite Mr. Guskey and Mr. Austin to please
2 jump in if your Honor permits, something that
3 Preferred Communication Systems, Inc. offered
4 to Mr. Waugh as an inducement to get him to
5 negotiate a universal settlement which was the
6 Enforcement Bureau's preferred outcome for
7 settling this case.

8 In other words, Preferred went
9 along with the universal settlement idea that
10 the Enforcement Bureau was most interested in
11 by trying to get Mr. Waugh to the negotiating
12 table and presenting this position even though
13 it was aware from informal conversations
14 predating that settlement offer that the
15 Enforcement Bureau would not accept such a
16 settlement offer. They did it to get Mr.
17 Waugh to the table. And please, Preferred,
18 jump in if you disagree.

19 MR. GUSKEY: Yes, this is --

20 MR. SILVA: Well, wait a minute.

21 JUDGE SIPPEL: Well, wait, wait
22 just a second. Let Mr. Silva get back on this

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1 one.

2 MR. SILVA: I mean the point is,
3 your Honor, --

4 JUDGE SIPPEL: We'll get to you,
5 sir.

6 MR. SILVA: The parties have been
7 negotiating settlement. Preferred and Waugh
8 have been negotiating, the Bureau has been
9 negotiating, but my point is this particular
10 issue of compensation to Mr. Waugh and what
11 form it takes and how much he's entitled to is
12 a private contractual dispute.

13 JUDGE SIPPEL: That's -- I --

14 MR. SILVA: And it has nothing to
15 do, and should have nothing to do, with the
16 settlement in this case, except the Bureau
17 says, well, there's an appearance here of
18 something amiss that he had the voting trust
19 and it was -- there was an appearance of a
20 sham behind the fact that he was a felon and
21 that by allowing this whole thing to recur
22 would, I guess, deserve the public interest,

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1 but what the Bureau is failing to say here is
2 they don't have to rely on appearances
3 anymore.

4 They've adduced what the facts are
5 in the course of discovery. And the facts are
6 that the voting trust was a result of
7 Communication's counsel advising Mr. Waugh
8 that you have been convicted of a felony and
9 you cannot hold an attributable interest in a
10 commission licensee and this is the only way
11 you can do this. You have to set up a voting
12 trust. You can be a consultant, but you
13 cannot be a principal.

14 And that is what happened, and
15 that's what Mr. Austin and Mr. Waugh over the
16 years I mean, the record is very clear, that
17 it was going to be the vehicle for Mr. Waugh's
18 interest. And there isn't anything wrong with
19 this.

20 And moreover, as far as all these
21 alleged misrepresentations against Preferred
22 because they didn't disclose Mr. Waugh wasn't

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1 the beneficiary of a nonvoting trust, they
2 don't have to. He's not an attributable
3 owner.

4 His, his felony conviction is in
5 fact not relevant to whether Preferred was
6 qualified or not. And I think they're finally
7 conceding that now in some of the pleadings
8 that they've recently submitted. But the
9 point is why is this of concern to the
10 Commission?

11 It's a private contractual matter.
12 It's being litigated. The whole settlement
13 should not hinge on what Mr. Waugh's interest
14 should be or how much he should get.

15 JUDGE SIPPEL: I'm delighted to
16 hear you say it that way. I was under the
17 impression that Mr. Waugh was the one that was
18 holding out to have this compensation issue
19 resolved before he would agree to enter into
20 this, this universal settlement.

21 MR. SILVA: But the settlement says
22 -- it, of course, takes sides, your Honor. He

1 can't go to court and try to vindicate his
2 interest here when the FCC and the company has
3 agreed not to ever give him this stock. I
4 mean that is taking sides in the deal. The
5 settlement agreement says Preferred will never
6 issue any equity interest to Mr. Waugh.

7 JUDGE SIPPEL: Unless -- well,
8 what's missing there is unless, unless awarded
9 by a court of jurisdiction with all appeals
10 resolved. What's wrong with that?

11 MS. SINGH: Well, your Honor, let
12 me just put it this way. Mr. Waugh was
13 affirmatively requesting that the voting trust
14 and stock be created and issued as part and
15 parcel of the settlement. That's on pages two
16 to three of the July 8, 2009 letter of which
17 the Bureau just provided your Honor a copy.
18 It was attached to Mr. Waugh's settlement fact
19 statement.

20 Therefore, Mr. Waugh's position,
21 at least as of July 8, 2009, and when he did
22 not repudiate despite the Bureau's invitation

1 on July 31, 2009 to revisit his settlement
2 position if at all there were any change to it
3 --

4 MR. SILVA: Counsel, I -- for you.

5 JUDGE SIPPEL: Let -- let --

6 MR. SILVA: Are you saying that
7 from the beginning, you did not impose a
8 condition on Mr. Waugh?

9 MR. OSHINSKY: You are framing the
10 question the way you want. Let Ms. Singh
11 finish. Observe some decorum.

12 MR. SILVA: All right.

13 JUDGE SIPPEL: We have to finish
14 questions really now --

15 MS. SINGH: Thank you, your Honor.

16 JUDGE SIPPEL: We'll take a break
17 if you want to take a break.

18 MS. SINGH: Your Honor, if that's
19 something that you'd like or if you believe
20 that counsel --

21 JUDGE SIPPEL: Why don't we do
22 that?

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1 MS. SINGH: Okay.

2 JUDGE SIPPEL: Why don't we take a
3 ten-minute break? I think things are a little
4 bit too, too high here. The motion has gotten
5 too high. Let's take a ten-minute break to
6 cool off.

7 (Whereupon, the above-entitled
8 matter went off the record at 10:59 a.m. and
9 resumed at 11:13 a.m.)

10 JUDGE SIPPEL: Okay, where did we
11 leave off? I really I want to just again ask
12 the question. I really -- I'm -- if -- I
13 agree. Mr. Silva is right. If this is
14 nothing more than a contract dispute about
15 compensation that you say is, that is either
16 in court or it's going to be in court, why are
17 we, why does the Bureau care about it?

18 MS. SINGH: Your Honor, the Bureau
19 doesn't care what form of compensation Mr.
20 Waugh gets adjudicated and is entitled to in
21 the form of anything other than stock. As we
22 stressed on the record earlier, the

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1 designation of stock to him even through a
2 voting trust gets back to the very fact
3 pattern that caused the Commission to
4 designate this case for a hearing.

5 JUDGE SIPPEL: I understand, but
6 what I'm hearing -- I'm just, you know,
7 picking up on what I'm hearing today,
8 apparently, and I'm hearing this also from Mr.
9 Austin and, and Mr. Guskey. I want to be sure
10 I got this name right, sir. It's Guskey or
11 Guskey, Guskey.

12 MR. GUSKEY: It's Guskey, yes.

13 JUDGE SIPPEL: They would use some,
14 some very, some kind of a stock standard to
15 work up some kind of a formula, I guess stock
16 performance on a formula, but it would all end
17 up, it would all come out to being cash. And
18 if that's the case, -- no?

19 MR. SILVA: Your Honor, that has
20 not been -- that would not be acceptable to
21 Mr. Waugh.

22 JUDGE SIPPEL: Well, that's what I

1 heard. I thought I heard --

2 MR. SILVA: Well, --

3 JUDGE SIPPEL: -- Mr. Guskey --

4 MR. SILVA: That was something that
5 was negotiated. It was a subject of a
6 negotiation. We tried to come up with some
7 contract, some future interest, and it just
8 didn't work. So, and that's when, one the
9 reasons Mr. Waugh wrote this, or I wrote the
10 letter on behalf of Mr. Waugh July 8, stating
11 that he wanted what he was promised, the stock
12 to be issued to this trust, which has been
13 formed by the way. And the trust agreement
14 has been in existence.

15 It's not that, it was really
16 formality that prevented it from being formed.
17 And that's, that's our position that if he is
18 a non-attributable owner and he gets this
19 stock through the voting trust, how much and
20 so forth really is a private contractual
21 matter?

22 And that conditioning the whole